

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 10, 2015 appellant, then a 63-year-old nurse educator, filed an occupational disease claim (Form CA-2) alleging that she sustained an aggravation of her degenerative disc disease due to constant sitting, staring at a computer screen, and inputting data while in the performance of duty.

In a July 22, 2014 report, Dr. Shirley Rodriguez, an osteopath, recounted appellant's complaints of mid-thoracic, left-sided pain medial to the scapular area. She reported physical examination findings of abnormal edema bilaterally in appellant's extremities. Dr Rodriguez assessed hypertension, osteoarthritis, gastroesophageal reflux disease, thoracic region strain, and venous insufficiency.

In an October 28, 2014 report, Dr. Wesley Johnson, a Board-certified orthopedic surgeon, recounted that appellant had worked for the employing establishment for a number of years and complained of chronic pain issues in her neck and back. On physical examination, he noted tenderness and mild swelling in her left wrist and some tenderness over the tuberosity of her right shoulder. Dr. Johnson indicated that appellant had a chronic condition that may have been exacerbated through her primary care.

Appellant resigned from the employing establishment, effective March 13, 2015.

In a letter dated May 12, 2015, the employing establishment controverted appellant's claim alleging that she had not submitted medical evidence of the alleged injury. It also noted that she had previous fall injuries in 2013 and 2014.

In statements dated October 22, 2014 and May 2, 2015, appellant explained that she was diagnosed with degenerative disc disease before she began working for the employing establishment in 2012. She reported that she was exposed to constant sitting, staring at screens, and inputting data at work and experienced painful, cramping hands, eye strain, headaches, and back pain.

By decision dated June 16, 2015, OWCP denied appellant's occupational disease claim, finding that she had not established that her diagnosed thoracic and lumbar spine conditions were causally related to the accepted factors of her federal employment.

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<sup>3</sup> Docket No. 18-1280 (issued March 12, 2019).

On June 29, 2015 appellant requested reconsideration.

In reports dated November 6, 2014 through April 20, 2015, Dr. Rodriguez provided examination findings and assessed right shoulder pain, cervicalgia, degenerative joint disease, osteoarthritis, thoracic strain, cervical strain, tenosynovitis of the thumb, and right shoulder supraspinatus tendon tear.

In a June 12, 2015 attending physician's report (Form CA-20), Dr. Rodriguez noted appellant's history of lumbar degenerative joint disease and diagnosed supraspinatus tendon tear and degeneration of the cervical, thoracic and lumbar spine. She checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by appellant's employment and explained that appellant worked at a desk job, which placed a strain on her spine, shoulders, and wrist.

By decision dated September 25, 2015, OWCP denied modification of the June 16, 2015 decision.

On November 20, 2015 appellant requested reconsideration.

Appellant submitted reports dated July 16 through October 29, 2015 from Dr. John M. Baldauf, a Board-certified orthopedic surgeon, who indicated that he treated her for complaints of right shoulder pain after a slip and fall injury approximately seven months prior. On initial examination of the right shoulder, Dr. Baldauf observed positive Neer and Hawkins signs and no pain or swelling. He diagnosed shoulder impingement syndrome, bilateral shoulder tendinitis, and bilateral shoulder joint pain.

By decision dated February 9, 2016, OWCP denied modification of the September 25, 2015 decision.

On March 21, 2016 appellant requested reconsideration.

In a May 11, 2016 statement, appellant indicated that she continued to be in pain on a level of 7 to 10 on most days. She alleged that it was common for a person with mild-to-moderate degenerative joint disease that was previously not problematic to experience a major exacerbation of her condition from a sedentary job and a hard fall onto cement.

By decision dated June 17, 2016, OWCP denied modification of the February 9, 2016 decision.

On September 7, 2016 appellant requested reconsideration. She contended that she had submitted all required medical documents from her physicians. Appellant asserted that her federal employment temporarily aggravated her preexisting degenerative joint condition and that the October 2014 fall made the aggravation permanent.

In a February 22, 2016 report, Dr. Archie C. Perry, a Board-certified orthopedic surgeon, indicated that he treated appellant for complaints of low back pain radiating into her bilateral legs. He discussed her diagnostic reports and provided examination findings. Dr. Perry diagnosed lumbar degenerative disc disease, lumbar spinal stenosis, and acquired lumbar spondylolisthesis.

In March 16 and 30, 2016 reports, Dr. Baldauf discussed appellant's history of injury and provided physical examination findings. He diagnosed right hip joint pain, lumbosacral degenerative disc disease with radiculopathy, lumbar spinal stenosis, acquired lumbar spondylolisthesis, and lumbago.

In an April 27, 2016 report, Dr. Willis Y. Wu, Board-certified in anesthesiology and pain medicine, noted lumbar examination findings of mildly limited range of motion and tenderness in the lumbosacral junction. He diagnosed lumbar intervertebral disc degeneration, lumbar radiculopathy, lumbar spondylosis without myelopathy, and hip osteoarthritis. Dr. Wu continued to treat appellant and provided medical reports dated May 13 and June 23, 2016.

By decision dated April 20, 2018, OWCP denied modification of the June 17, 2016 decision.

Appellant appealed to the Board. By decision dated March 12, 2019, the Board affirmed OWCP's April 20, 2018 decision, finding that she had not met her burden of proof to establish causal relationship between her diagnosed medical conditions and accepted factors of her federal employment.

On October 7, 2019 appellant requested reconsideration. She submitted various articles about injuries that result from sitting for long periods of time.

By decision dated May 27, 2020, OWCP denied modification.

On January 22, 2021 appellant requested reconsideration. She indicated that she continued to have pain and suffering due to sitting for six hours a day on a poorly prepared workstation. Appellant explained that she was diagnosed with degenerative joint disease in 2000, but her condition was not problematic until she started to work for the employing establishment. She asserted that her sedentary job duties temporarily aggravated her degenerative joint disease and her fall in October 2014 permanently aggravated her condition.

By decision dated February 11, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>4</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by

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<sup>4</sup> 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>5</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>6</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>7</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>8</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

With her January 22, 2021 request for reconsideration, appellant submitted a statement alleging that she did not experience problems with her degenerative joint disease until she began to work for the employing establishment. She asserted that her sedentary job duties temporarily aggravated her degenerative joint disease and her fall in October 2014 permanently aggravated her condition. Appellant's reconsideration request does not advance a new legal argument not previously considered nor does it show that OWCP erroneously applied or interpreted a specific point of law. Her argument is substantially similar to that which was previously considered and discussed in OWCP's April 20, 2018 decision.<sup>9</sup> Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

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<sup>5</sup> 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>6</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>7</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>8</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>9</sup> *See T.S.*, Docket No. 20-0968 (issued August 17, 2021); *see also J.V.*, Docket No. 19-1554 (issued October 9, 2020); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>10</sup> 20 C.F.R. § 10.606(b)(3)(i) and (ii); *P.M.*, Docket No. 20-0780 (issued November 24, 2020); *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

Furthermore, the Board finds that appellant has not provided any relevant and pertinent new evidence not previously considered.<sup>11</sup> Thus, appellant is also not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).<sup>12</sup>

As appellant has not met any of the regulatory requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>13</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> *T.H.*, Docket No. 20-1598 (issued June 2, 2021); *F.D.*, Docket No. 19-0890 (issued November 8, 2019).

<sup>12</sup> 20 C.F.R. § 10.606(b)(3)(iii); *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *T.M.*, Docket No. 19-0535 (issued July 25, 2019).

<sup>13</sup> *S.M.*, Docket No. 21-0392 (issued August 12, 2021); *D.G.*, Docket No. 19-1348 (issued December 2, 2019); *A.R.*, Docket No. 16-1416 (issued April 10, 2017); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).